IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12053 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHESHBHAI CHUNILAL VASAVA

Versus

STATE OF GUAJRAT

Appearance:

1. Special Civil Application No. 12053 of 2004
MS BANNA DUTTA for MS KD PARMAR for Petitioner
MR HM PRACHCHHAK, AGP for Respondents No. 1-3
RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 11/01/2005

ORAL JUDGEMENT

1. This petition is preferred by the petitioner under Article 226 of the Constitution of India

challenging his detention in pursuance of the order passed by District Magistrate, Vadodara on 02.07.2004 in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ["PASA Act" for short]. The petitioner came to be detained from 02.07.2004, in pursuance of the above order.

2. The grounds of detention of the petitioner as served upon him and placed on record reveal that in all, for the period from 04.06.2003 to 21.05.2004 at Dabhoi Taluka Police Station, eleven offences were registered against the petitioner under Sections 66B, 66E and 81 of the Bombay Prohibition Act, wherein the petitioner was found in possession of country liquor of different quantity weighting from 3 ltrs. to 107 ltrs. In all those cases, the petitioner is on bail. The detaining authority relied upon the material of investigation on those eleven offences registered against the petitioner. The detaining authority also relied upon three in-camera statements of witnesses recorded by the police on 12.04.2004. Those in-camera statements of the witnesses verified by Dy.S.P. on 12.04.2004, 14.04.2004 and 15.04.2004. Out of these three statements, detaining authority verified two statements on 28.05.2004 and one statement verified on 17.06.2004. All the three above statements referred to the incident occurred on 28.03.2003 and 03.04.2003 wherein mainly witnesses have stated that they were threaten by the petitioner on the excuse that the witness was keeping watch on the business of the petitioner of selling illegal liquor and gives information to the police. In one incident, a witness was forced to keep and conceal supply of illegal liquor of the petitioner. One witness stated that the petitioner demanded some amount from him, when witness refused to obey the demands, the witness was beaten by the petitioner and was abused. The petitioner was aided by his associates and due to fear of the petitioner, the witnesses did not reach to the police station for registration of complaint and requested the police to conceal their identity. The detaining authority having taken into consideration, the facts of registration of the offences and relying upon the investigating papers and relying upon the in-camera statements of the three witnesses reached to a subjective satisfaction that the petitioner was a head strong person and was picking up quarrels with innocent persons and was dealing in storing, selling and transporting illegal country liquor. The petitioner was dangerous to the extent that whenever he found any obstacle from any citizen in his illegal activity, he being of ferocious tendency was in habit of

beating and threatening innocent citizen by deadly weapon. On account of fear of the petitioner, no citizen dare to file any complaint against the petitioner. From the above material, the detaining authority reached to a subjective satisfaction that the illegal activity of the petitioner was prejudicial to the maintenance of public order and public health and that such activity of the petitioner was required to be prevented forthwith. The detaining authority considered other actions, which may be taken against the petitioner, but came to a conclusion that other actions like proceedings of externment of the petitioner was likely to take time, while the activity of the petitioner was required to be prevented forthwith. The detaining authority, therefore, came to a conclusion that there was no other alternative, except to pass order under the PASA Act for detention of the petitioner and hence, the order under challenge came to be passed.

3. Learned advocate Ms.Banna Dutta for Ms.K.D.Parmar, for the petitioner and learned AGP Mr.H.M.Prachchhak, for respondents were heard at length.

4. Learned advocate for petitioner pressed in service of various grounds to challenge and quashing of the order impugned in this petition. Mainly two grounds vehemently urged, firstly, the delay in passing the order of detention and secondly from material placed before the detaining authority it never disclosed that activity of the petitioner was prejudicial to the maintenance of public order. It was vehemently argued that the offences mentioned at Sr.No.7 to 11 in the grounds of detention are the offences registered after alleged in-camera statements of the witnesses came to be recorded on 12.04.2004. Thereafter, in the month of May, offences at Sr.No.7 to 11 came to be registered and those statements were verified by Dy.S.P. on 12th, 14th and 15th April, 2004 revealing the incidents of 28.03.2004, 30.03.2004 and 03.04.2004. Out of three statements, the detaining authority verified two statements on 28.03.2004, while one statement on 17.06.2004 and order of detention came to be passed on 02.07.2004 and thus, there is a delay in passing of the detention order. For the second contention, it was contended that merely registration of crimes under the Bombay Prohibition Act against the petitioner would not by itself called as activity prejudicial to the maintenance of public order. While going through the in-camera statements of the witnesses, it is clear that neither public tranquility nor public health nor maintenance of public order was disrupted. Therefore, it is contended that the order under challenge is required to be quashed and set aside.

5. As against that learned AGP, while supporting the order of detention, contended that as per availability of statements of the witnesses, who are apprehending untoward behaviour of the petitioner came to be recorded by the detaining authority and these circumstances cannot be said to be delay in passing the order of detention. It was contended that as many as 11 cases came to be registered against the petitioner wherein, he was found in possession of country liquor of variety of quantity. It was contended that in-camera statements as recorded by sponsoring authority and verified by the detaining authority discloses tendency of the petitioner to create threat to the innocent citizens for the purpose of his illegal activity and thereby causing disturbance to public order. It was contended that the application, therefore, requires to be dismissed.

6. Having gone through the record carefully and evaluating the contentions raised, this petition can be disposed of on the ground that whether material supplied to the detaining authority disclosed that activity of the petitioner was disturbing to the maintenance of public order. As referred above, the detaining authority has taken into consideration two aspects in reaching to his subjective satisfaction about the disturbance of public order by the activity of the petitioner. First aspect is in respect of investigation papers of eleven crimes registered against the present petitioner and secondly, the detaining authority took into consideration in-camera statements of the witnesses.

7. In the matter of RASHIDMIYA ALIAS CHHAVA AHMEDMIYA SHAIKH Vs. POLICE COMMISSIONER, AHMEDABAD AND ANOTHER, reported in AIR 1989 SC 1703, the Apex Court in clear terms observed that filing of cases under Bombay Prohibition Act, would not amount to the activities of the petitioner disturbing the public order, this would be other credible material to come to that conclusion. Such material which indicates that the detenu became a threat to the society and that the entire tempo of the society sought threaten and disturbed on account of such activities as alleged of the detenu. Having followed decisions of the Apex Court, in the matter of Rashidmiya (Supra), the Division Bench of this Court in Letters Patent Appeal No.223 of 2000 in Special Civil Application No.554 of 2000 as decided on 22.08.2000 observed that there must be some credible material to come to a conclusion that by the activity of the detenu, public order was disturbed. Considering the facts of this case, mere fact that registration of eleven cases under Bombay

Prohibition Act against the petitioner would not amount to the activity prejudicial to the maintenance of public order then there are three in-camera statements as recorded by the sponsoring authority and verified by the detaining authority. All the three incidents referred by the witnesses disclosing skirmishes between detenu on one part and the witnesses on the other. There is nothing in the statements that by the activity of the petitioner, the maintenance of public order was disturbed and the society as a whole was threatened. If the statements are taken on their face value, one witness was beaten by the detenu on suspicion that the witnesses was keeping watch upon the activity of the petitioner and was informing the police. It is found from the second statement that the petitioner demanded some amount from the witness and on refusal, the witness was beaten, while in third incident, it is disclosed by the witness that on refusing to conceal illegal liquor of the petitioner, the petitioner and his associates had beaten the witness. This appears to be individual incident by which there is no allegation at all even public tempo is disturbed. Therefore, these three in-camera statements fall short to reach to the subjective satisfaction that activity of the petitioner was prejudicial to the maintenance of public order or public health. There is absolutely no material to come to a conclusion that the petitioner was threatened to the society as a whole and was causing disruption in maintenance of public order. In this view of the matter, the order under challenge is required to be quashed and set aside.

8. In the result, in view of the above discussion, the petition is allowed. The detention order passed by the District Magistrate, Vadodara on 02.07.2004 against the petitioner under PASA Act, is quashed and set aside. The petitioner Maheshbhai Chunilal Vasava is hereby ordered to be set at liberty forthwith, if he is not required to be detained for any other purpose. Rule made absolute. Direct service is permitted.

[J. R. VORA,J.]

(vijay)